

U.S. Customs and Border Protection



NEW DATE FOR THE OCTOBER 2015 CUSTOMS BROKER LICENSE EXAMINATION

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: This document announces that U.S. Customs and Border Protection has changed the date on which the semi-annual written examination for an individual broker's license will be held in October 2015.

DATES: The customs broker's license examination scheduled for October 2015 will be held on Wednesday, October 7.

FOR FURTHER INFORMATION CONTACT: John Lugo, Broker Management Branch, Office of International Trade, (202) 863-6015.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. 19 CFR 111.11 sets forth the basic requirements for a broker's license and, 19 CFR 111.11 (a)(4), provides that

an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on a written examination.

19 CFR 111.13 sets forth the requirements and procedures for the written examination for an individual broker's license and states that written customs broker license examinations will be given on the first Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

CBP recognizes that the first Monday in October 2015 coincides with the observance of the religious holiday of Shemini Atzeret. In consideration of this conflict, CBP has decided to change the regularly scheduled date of the examination. This document announces that CBP has scheduled the October 2015 broker license examination for Wednesday, October 7, 2015.

Dated: June 29, 2015.

BRENDA B. SMITH,
*Assistant Commissioner,
Office of International Trade,
U.S. Customs and Border Protection.*



APPROVAL OF WFR METERING, INC., AS A COMMERCIAL GAUGER

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of WFR Metering, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that WFR Metering, Inc., has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of July 15, 2014.

DATES: The approval of WFR Metering, Inc., as commercial gauger became effective on July 15, 2014. The next triennial inspection date will be scheduled for July 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that WFR Metering, Inc., 18200 Westfield Place Dr., #1315, Houston, TX 77090, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. WFR Metering, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
8.2	Sampling—Automatic Samplers.
8.3	Sampling—Sample Receiver Mixing.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

Dated: June 25, 2015.

IRA S. REESE,
*Executive Director,
Laboratories and Scientific
Services Directorate.*

**REVOCATION OF A RULING LETTER AND MODIFICATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF THYMOGLOBULIN®**

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Revocation of a ruling letter and modification of treatment concerning the tariff classification of Thymoglobulin® [Anti-thymocyte Globulin (Rabbit)] Sterile Lyophilized Preparation from France.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation

Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the tariff classification of Thymoglobulin® [Anti-thymocyte Globulin (Rabbit)] Sterile Lyophilized Preparation, under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of this proposed action was published in the Customs Bulletin, Vol. 49, No. 17, April 29, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 14, 2015.

FOR FURTHER INFORMATION CONTACT: Lynne O. Robinson, Tariff Classification and Marking Branch: (202) 325–0067.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 49, No. 17, on April 29, 2015, proposing to revoke New York Ruling Letter (NY) L80355, dated October 28, 2004, in which CBP determined that the subject merchandise was properly classified under subheading 3004.90.91, HT-

SUS, which provides for “Medicaments... consisting of mixed or un-mixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other.”

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY L80355 to reflect the proper tariff classification of this merchandise under sub-heading 3002.10.02, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera, other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Dated: June 22, 2015

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H250457

June 22, 2015

CLA-2 OT:RR:CTF:TCM H250457 LOR

CATEGORY: Classification

TARIFF NO.: 3002.10.02

MR. RICHARD D'INNOCENZO
INTERNATIONAL TRADE COMPLIANCE MANGER
GENZYME CORPORATION
500 KENDALL STREET
CAMBRIDGE, MA 02142

RE: Revocation of New York Ruling Letter L80355; classification of Thymoglobulin® [Anti-thymocyte Globulin (Rabbit)] Sterile Lyophilized Preparation, imported from France

DEAR MR. D'INNOCENZO,

This is in regard to New York Ruling Letter (NY) L80355, dated October 28, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of Thymoglobulin® [Anti-thymocyte Globulin (Rabbit)] Sterile Lyophilized Preparation (“Thymoglobulin”). In NY L80355, U.S. Customs and Border Protection (CBP) classified the product, under heading 3004, HTSUS, as medicaments. We have determined that NY L80355 is in error because the merchandise at issue is specifically provided for in heading 3002, HTSUS, and is therefore, excluded from classification in heading 3004, HTSUS. Therefore, this ruling revokes NY L80355.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), , a notice was published in the CUSTOMS BULLETIN, Vol. 49, No. 17, on April 29, 2015, proposing to revoke New York Ruling Letter (NY) L80355, dated October 28, 2004, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice

FACTS:

NY L80355 described Thymoglobulin® as follows:

[T]hymoglobulin® [Anti-thymocyte Globulin (Rabbit)] Sterile Lyophilized Preparation, is a medicament, for intravenous administration, put up in a package containing two 7 mL vials. Vial 1 contains a sterile, freeze-dried powder consisting of Thymoglobulin® [Anti-thymocyte Globulin (Rabbit)] (the active ingredient) mixed with several excipients. Vial 2 contains sterile water for injection (the diluent), which is used to reconstitute the freeze-dried powder in Vial 1. Thymoglobulin® [Anti-thymocyte Globulin (Rabbit)], is a purified, pasteurized, gamma immune globulin, obtained by immunization of rabbits with human thymocytes, containing cytotoxic antibodies directed against antigens expressed on human T-lymphocytes. Thymoglobulin® [Anti-thymocyte Globulin (Rabbit)] is indicated for the treatment of renal transplant acute rejection, in conjunction with concomitant immunosuppression.

The CBP Laboratory and Scientific Services Department (LSSD) report #NY20132148, dated November 15, 2013, states in pertinent part, the following:

The product is a mixture of immunoglobulins derived from a rabbit antiserum. It is consistent with the definitions provided in the EN¹ for serum globulins, blood fractions, and immunological products.

NY L80355 classified Thymoglobulin® under subheading 3004.90.9115, HTSUS (Annotated), which provides for “Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings: Other: Antineoplastic and immunosuppressive medicaments.”

ISSUE:

Are the subject modified immunological products, imported in single-dosage vial form, properly classified under heading 3002, HTSUS, as “modified immunological products,” or heading 3004, HTSUS, as “medicaments ... put up in measured dose or in forms or packings for retail sale: Other: Other?”

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions at issue are as follows:

- | | |
|------------|---|
| 3002 | Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: |
| 3002.10.02 | Antisera, other blood fractions and immunological products, whether or not obtained by means of biotechnological processes ² |
| *** | |
| 3004 | Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: |
| 3004.90 | Other: |
| 3004.90.91 | Other |

Note 2 to Chapter 30, HTSUS (2002), states: “For the purposes of heading 3002, the expression ‘modified immunological products’ applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates.”

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (EN).

² In 2002 the subheading at issue was 3002.10.01, HTSUS. Due to various changes in the tariff not pertinent in this analysis, the subheading at issue is now 3002.10.02, HTSUS.

provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In 2004, the EN to Heading 30.02 stated, in pertinent part:

This heading covers:

- (C) Antisera and other blood fractions and modified immunological products.

These products include:

- (2) **Modified immunological products, whether or not obtained by means of biotechnological processes.**

[Emphasis in original] Products whose antigen-antibody reaction corresponds to natural antisera and which are used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

- (a) **Monoclonal antibodies (MABs)** — specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
- (b) **Antibody fragments** — parts of an antibody protein obtained by means of specific enzymatic splitting.
- (c) **Antibody and antibody fragment conjugates** — enzymes (e.g. alkaline phosphatase, peroxidase or betagalactosidase) or dyes (fluorescein) covalently bound to the protein structure are used for straightforward detection reactions.

* * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling NY L80355 classified Thymoglobulin® under heading 3004, HTSUS. However, the terms of this heading specifically excludes goods which can be classified under heading 3002, HTSUS. Therefore, if the subject merchandise can be properly classified under heading 3002, HTSUS, imported either in bulk or single-dose vials, it is precluded from classification under heading 3004, HTSUS.

Thymoglobulin® is a purified, pasteurized, gamma immune globulin. Based upon the literature provided during the U.S. Food and Drug Administration screening process, the product, which is obtained by the immunization of rabbits with human thymocytes, contains cytotoxic antibodies directed against antigens expressed on human T-lymphocytes. Human red blood cells are used in the manufacturing process to deplete cross-reactive antibodies to non-T-cell antigens.³ The product induces immune-suppression as a result of T-cell depletion and immune modulation in renal transplant patients. The

³ See, <http://www.fda.gov/downloads/BiologicsBloodVaccines/BloodBloodProducts/ApprovedProducts/LicensedProductsBLAs/FractionatedPlasmaProducts/UCM117134.pdf>.

imported good consists of one package containing two 7mL vials; with Vial 1 consisting of Freeze-dried Thymoglobulin Formulation and Vial 2 consisting of Diluent (sterile water for Injection), which are combined prior to injection. The reconstituted preparation contains 5 mg/mL of Thymoglobulin, of which 90% is rabbit gamma immune globulin.

Thymoglobulin® is an immunological product obtained from a biotechnical process (the immunization of rabbits with human thymocytes). It contains monoclonal antibodies (MABs), which are produced by the body's immune system for the function of recognizing, binding, and subsequently destroying infectious agents that display foreign antigens.⁴ MABs are used therapeutically to stimulate the immune system. Whereas MABs are specifically provided for in Note 2 to Chapter 3002, HTSUS, and Thymoglobulin® provides for the treatment of renal transplant acute rejection in conjunction with concomitant immune-suppression, Thymoglobulin® is classified in heading 3002, HTSUS. It is excluded from classification in heading 3004, HTSUS.

Clarifications were made to the ENs of Heading 30.02 in 2007 and 2012, as well as to Note 2 to Chapter 30 in 2012.

EN 30.02(C)(2)(a) now reads, in pertinent part:

This heading covers:

- (C) Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes.

These products include:

- (2) Immunological products, whether or not modified or obtained by means of biotechnological processes.

Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

- (a) **Monoclonal antibodies (MAB)** – specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
- (b) **Antibody fragments** – active parts of an antibody protein obtained by means of e.g., specific enzymatic splitting. This group includes inter alia single-chain (scFv) antibodies.
- (c) **Antibody conjugates and antibody fragment conjugates** – conjugates which contain at least one antibody or an antibody fragment...

Note 2 to Chapter 30 now reads:

For the purposes of heading 3002, the expression “immunological products” applies to peptides and proteins (other than goods of heading 2937) which are directly involved in the regulation of immunological processes, such as monoclonal antibodies (MAB), antibody fragments, antibody conjugates and antibody fragment conjugates, interleukens, interferons

⁴ See, Stan K. Bardal, Jason E. Waecher & Douglas S. Martin, *Applied Pharmacology-Student Consult*, 217–218 (2011).

(IFN), chemokines and certain tumor necrosis factors (TNF), growth factors (GF), hematopoietins and colony stimulating factors (CSF).

In 2002, as today, “modified immunological products” with regard specifically to immunological products, including MABs and antibody fragment conjugates (an antibody combined with a protein), are included in heading 3002, HTSUS.

Based on the foregoing, Thymoglobulin® is properly classified under heading 3002, HTSUS. It is excluded from classification under heading 3004, HTSUS.⁵

Thymoglobulin® is specifically provided for under subheading 3002.10.02, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera, other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”.

HOLDING:

By application of GRI 1, the subject merchandise is classified in subheading 3002.10.02, HTSUS, which provides for “... modified immunological products, whether or not obtained by means of biotechnological processes ...: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”. The column one, general rate of duty is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov

EFFECT ON OTHER RULINGS:

New York Ruling Letter L80355, dated October 28, 2004, is REVOKED.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Sincerely,

LEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

⁵ See also, HQ H128157, dated August 2, 2011 (classifying Campath®, a monoclonal antibody medicament under heading 3002, HTSUS), HQ H110419, dated August 2, 2011 (classifying Antegren®, a monoclonal antibody medicament under heading 3002, HTSUS), and HQ H110420, dated August 2, 2011 (classifying Avastin® and Herceptin®, monoclonal antibody medicaments under heading 3002, HTSUS), HQ H110421, dated August 2, 2011 (classifying Raptiva®, Rituxan®, and Xolair®, monoclonal antibody medicaments, under heading 3002, HTSUS), and lastly, HQ H207575, dated July 25, 2014 (classifying Amevive® (alefacept), Alefacept, monoclonal antibody medicaments, under heading 3002, HTSUS).

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN MEDICAL
ALERT BRACELETS**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification of a ruling letter, and proposed revocation of treatment relating to the tariff classification of certain medical alert bracelets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to modify a ruling letter and to revoke treatment relating to the tariff classification of certain medical alert bracelets under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before August 14, 2015.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street N.E., 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under customs and related laws. In addition, both the trade community and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of certain medical alert bracelets. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) G82337, dated October 6, 2000 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY G82337, CBP determined that the Item 1 bracelet was classified in subheading 6117.80.95, which provides for “Other made up clothing accessories, knitted or crocheted...: Other accessories: Other: Other.” It is now CBP’s position that the bracelet is classified

in subheading 7117.90.90, HTSUS, which provides for “Imitation jewelry: Other: Other: Valued over twenty cents per dozen pieces or parts: Other: Other.”

Also in NY G82337, CBP determined that the Item 2 bracelet with the metal piece was classified in subheading 6217.10.95, HTSUS, which provides for “Other made up clothing accessories...: Accessories: Other: Other.” It is now CBP’s position that the Item 2 bracelet with the metal piece is classified in subheading 7117.19.90, HTSUS, which provides for “Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify NY G82337, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of the Item 1 and Item 2 with base metal piece bracelets according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H253887, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: June 24, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY G82337

October 6, 2000

CLA-2-61:RR:NC:3:353 G82337

CATEGORY: Classification

TARIFF NO.: 6117.80.9540, 6217.10.9530

Ms. MARY FONG
HECNY BROKERAGE SERVICES, INC.
8933 S. LA CIENEGA BLVD.
INGLEWOOD, CA 90301

RE: The tariff classification of textile bracelets from China.

DEAR Ms. FONG:

In your letter dated September 11, 2000 you requested a classification ruling.

The submitted samples are two items that you call belts, but upon examination were determined to be bracelets. Item 1, composed of neoprene rubber covered on both sides with knit 100% nylon fabric, is a bracelet with a plastic buckle. Item 2, composed of woven 100% nylon fabric, is a bracelet with a plastic buckle. You state that the items are designed as medical alerts, and that depending on the order, some bracelets will be imported with and some without a small metal piece on the top.

Chapter 71, HTSUSA, encompasses, among other things, imitation jewelry. Note 3(g) to Chapter 71, HTSUSA, excludes "Goods of section XI (textiles and textile articles)." The items are considered clothing accessories.

The applicable subheading for the Item 1 knit bracelet will be 6117.80.9540, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other made up clothing accessories, knitted or crocheted...: Other accessories: Other: Other, Of man-made fibers: Other." The duty rate will be 15% ad valorem.

The applicable subheading for the Item 2 woven bracelet will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other made up clothing accessories...other than those of heading 6212: Accessories: Other: Other, Of man-made fibers." The duty rate will be 15% ad valorem.

The item 1 knit bracelet and item 2 woven bracelet fall within textile category designation 659. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H253887
CLA-2 RR:CTF:TCM H253887 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 7117.90.90; 7117.19.90

JENNY FU
BROKERAGE MANAGER
HECYNY BROKERAGE SERVICES, INC.
19550 SOUTH DOMINGUEZ HILLS DRIVE
RANCHO DOMINGUEZ, CA 90220

Re: Modification of NY G82337; Classification of Certain Medical Alert Bracelets

DEAR Ms. FU:

This is in reference to New York Ruling Letter (NY) G82337, dated October 6, 2000, issued to you concerning the tariff classification of two styles of bracelets under the Harmonized Tariff Schedule of the United States (HTSUS). You submitted two styles of bracelets to U.S. Customs and Border Protection (CBP), one textile and rubber bracelet (Item 1), and one textile bracelet (Item 2).

We have reviewed NY G82337 and find it to be in error with regard to the classification of the Item 1 bracelet and the Item 2 bracelet with the metal piece. For the reasons set forth below, we hereby modify NY G82337 with regard to the classification of the Item 1 bracelet and the Item 2 bracelet with the metal piece.

FACTS:

In NY G82337, your ruling request included samples of the two different styles of bracelets. The Item 1 bracelet consists of neoprene rubber covered on both sides with knit nylon fabric. The Item 1 bracelet also includes a plastic buckle.

Item 2, composed of woven 100% nylon fabric, is a bracelet with a plastic buckle. Your ruling request stated that the bracelets are designed as medical alerts, and that depending on the order, some bracelets will be imported with a small metal piece attached to them.

ISSUE:

Is the Item 1 bracelet classified under heading 4015, HTSUS, as a rubber accessory, under heading 6117, HTSUS, as a knitted textile accessory, or under heading 7117, HTSUS, as imitation jewelry?

Is the Item 2 bracelet with the metal piece classified under heading 6217, HTSUS, as a woven textile accessory, or under heading 7117, HTSUS, as imitation jewelry?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may

then be applied in order. Under GRI 6, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions at issue are as follows¹ :

4015	Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanized rubber other than hard rubber:
4015.90.00	Other: * * *
6117	Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories:
6117.80	Other accessories: Other:
6117.80.95	Other: * * *
6217	Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212:
6217.10	Accessories: Other:
6217.10.95	Other: * * *
7117	Imitation jewelry: Of base metal, whether or not plated with precious metal:
7117.19	Other: Other:
7117.19.90	Other: * * *
7117.90	Other: Other: Valued over twenty cents per dozen pieces or parts: Other:
7117.90.90	Other: * * *

Note 2(a) to Chapter 40 states as follows:

2. This Chapter does not cover:

(a) Goods of section XI (textiles and textile articles)

* * *

¹ The records with respect to NY G82337 were lost in the September 11, 2001 destruction of the World Trade Center. We do not have information regarding the type of base metal which formed the base metal piece. As such, we cannot include the base metal chapters in our analysis of the instant bracelet.

Note 1 to Chapter 61 states as follows:

This chapter applies only to made up knitted or crocheted articles.

* * *

Note 1 to Chapter 62 states as follows:

This chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted articles (other than those of heading 6212).

* * *

Note 3(g) to Chapter 71 states as follows:

3. This Chapter does not cover:

(g) Goods of section XI (textiles and textile articles)

* * *

Note 9 to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

* * *

Note 11 to Chapter 71 states as follows:

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * *

GRI 3 provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

* * *

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to GRI 3(b) provide, in pertinent part, that:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * *

EN 61.17 provides, in pertinent part, as follows:

This heading covers made up knitted or crocheted clothing accessories, not specified or included in the preceding headings of this Chapter or elsewhere in the Nomenclature. The heading also covers knitted or crocheted parts of garments or of clothing accessories, (**other than** parts of articles of **heading 62.12**).

The heading covers, *inter alia* :

- (1) **Shawls, scarves, mufflers, mantillas, veils** and the like.
- (2) **Ties, bow ties and cravats.**
- (3) **Dress shields, shoulder or other pads.**
- (4) **Belts of all kinds (including bandoliers) and sashes (e.g.,**

military or ecclesiastical), whether or not elastic. These articles are included here even if they incorporate buckles or other fittings of precious metal or are decorated with pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

- (5) **Muffs**, including muffs with mere trimmings of furskin or artificial fur on the outside ...

* * *

Note 2(a) to Chapter 40 states that goods of Section XI (Chapters 50–63) are excluded from classification in Chapter 40. Similarly, Note 3(g) to Chapter 71 states that goods of Section XI are excluded from classification in Chapter 71. If the Item 1 bracelet is *prima facie* classifiable as a textile accessory of heading 6117, HTSUS, then it is excluded from Chapters 40 and 71.

In NY G82337, CBP determined that the Item 1 bracelet was classified under heading 6117, HTSUS. As stated above, the Item 1 bracelet consists of neoprene rubber covered with knit nylon fabric. The bracelet also has a plastic buckle. According to the ruling request, some of these bracelets will be imported together with a base metal piece. The base metal piece will include medical alert information.

Note 1 to Chapter 61 states that the Chapter only applies to knitted or crocheted articles. Thus, this Note limits the goods classified in this chapter to goods which are almost entirely comprised of knitted or crocheted fabric. According to the ENs, the goods of Chapter 61 may include minor components other than knitted or crocheted textiles. For example, EN 61.17 states that knitted or crocheted belts remain classified in that heading, even if they incorporate metal buckles or fittings. EN 61.17 also states that knit muffs with mere trimmings of fur remain classified in that heading.

If the instant bracelet consists almost entirely of knitted fabric, but has some minor components of other materials, then it is classifiable under heading 6117, HTSUS. However, the Item 1 bracelet consists of knitted fabric, a plastic buckle, a neoprene rubber core and sometimes a base metal piece. The rubber core is an important component because it forms the structure of the bracelet. As the rubber core is an important component of the bracelet, the Item 1 bracelet is not *prima facie* classifiable as a textile accessory under heading 6117, HTSUS. Therefore, Note 2(a) to Chapter 40 and Note 3(g) to Chapter 71 do not exclude the bracelet from classification in those chapters.

Applying GRI 1, we note that heading 4015, HTSUS, provides for rubber accessories, while heading 6117, HTSUS, provides for knitted or crocheted textile accessories. Heading 7117, HTSUS, provides for imitation jewelry. Heading 4015, HTSUS, only covers the rubber portion of the bracelet, while heading 6117, HTSUS, only covers the textile portion of the bracelet. Unlike the other two headings, heading 7117, HTSUS, is not limited in scope by a named constituent material.

Note 11 to Chapter 71 defines imitation jewelry as articles of jewelry which do not incorporate natural or cultured pearls, precious or semiprecious stones, precious metal, or metal clad with precious metal. Note 9(a) to Chapter 71 states that “articles of jewelry” means small objects of personal adornment, such as necklaces, bracelets and rings. As the instant merchan-

dise is a bracelet which does not incorporate pearls, precious stones or precious metal, it is classified as imitation jewelry of heading 7117, HTSUS.

Applying GRI 6, we note that subheading 7117.19.90, HTSUS, provides for imitation jewelry of base metal. Subheading 7117.90.90, HTSUS, provides for imitation jewelry of other materials. As the instant bracelet consists of rubber, textile and base metal, it is a composite good. Therefore, we must apply GRI 3(b) to classify the bracelet at the subheading level.

According to GRI 3(b), a composite good is classified according to the component which imparts the good's essential character. In order to identify a composite good's essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in EN VIII to GRI 3(b) which are "the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int'l Trade 2006). With regard to the component which imparts the essential character, the CIT has stated it is "that which is indispensable to the structure, core or condition of the article, i.e. what it is." *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

The Item 1 bracelet consists of knitted fabric, a neoprene rubber core and sometimes a base metal piece. The rubber core creates the form and structure of the bracelet; it also comprises most of the bracelet's mass and weight. The knitted fabric covers the entire surface area of the bracelet and creates visual interest. The base metal piece is only included with some of the Item 1 bracelets, but it does include important medical alert information.

As each of the three components play an important role with regard to the Item 1 medical alert bracelet, we cannot determine which component imparts the essential character. Therefore, we shall apply GRI 3(c), which states that the subject merchandise shall be classified under the heading or subheading which occurs last in the HTSUS. The two applicable subheadings are 7117.19.90 and 7117.90.90, HTSUS. Therefore, the Item 1 bracelet shall be classified under subheading 7117.90.90, HTSUS, which provides for imitation jewelry of "other" materials.

Like the Item 1 bracelet, the Item 2 bracelet with the metal piece consists of both textile and another constituent material. Heading 6217, HTSUS, provides for woven textile accessories. If the Item 2 bracelet with the metal piece is *prima facie* classifiable under heading 6217, HTSUS, then Note 3(g) to Chapter 71 precludes the bracelet from classification in heading 7117, HTSUS.

However, like the Item 1 bracelet, the metal component of the Item 2 bracelet plays too large a role in relation to the use of a medical alert bracelet to be covered by heading 6217, HTSUS. The bracelet is sold as a medical alert bracelet. The metal piece will be engraved at a later date with important medical information related to the bracelet's purchaser. The metal piece is the reason that the bracelet is being purchased. Therefore, the Item 2 bracelet with the metal piece is not *prima facie* classifiable as a woven textile accessory under heading 6217, HTSUS. Therefore, Note 3(g) to Chapter 71 does not exclude it from classification in Chapter 71.

Like Item 1, the Item 2 bracelet is a composite good. Both the textile and the base metal piece play important roles. The textile provides the form and structure to the necklace, and has a larger visible surface area. The metal piece includes important medical information. Therefore, we cannot deter-

mined the essential character of the Item 2 bracelet with the metal piece. As such, it fall to be classified in subheading 7117.19.90, HTSUS, as imitation jewelry of base metal by application of GRI 3(c).

HOLDING:

By application of GRI 1, GRI 3(c) and GRI 6, the Item 1 bracelet is classified under subheading 7117.90.90, HTSUS, as “Imitation jewelry: Other: Other: Valued over twenty cents per dozen pieces or parts: Other: Other.” The 2015 column one, general rate of duty is 11 percent *ad valorem*.

By application of GRI 1, GRI 3(c) and GRI 6, the Item 2 bracelet with the base metal piece is classified under subheading 7117.19.90, HTSUS, as “Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other.” The 2015 column one, general rate of duty is 11 percent *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY G82337, dated October 6, 2000, is hereby modified with regard to the Item 1 bracelet and the Item 2 bracelet with the metal piece.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

**REVOCAION OF RULING LETTERS AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN PASSENGER BOARDING
BRIDGES**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of ruling letters and revocation of treatment relating to the classification of certain passenger boarding bridges.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is revoking three ruling letters relating to the tariff classification of certain passenger boarding bridges under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also is also revoking revoke any treatment previously

accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 22, 2015, in Vol. 49, No. 16 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or before September 14, 2015.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, at (202) 325-0104.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (“Customs Modernization”) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057),), a notice was published in the CUSTOMS BULLETIN, Volume 49, No. 16, on April 22, 2015, proposing to revoke NY D85781, NY D88830, and NY B88222, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been spe-

cifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D85781, NY B88222, and NY D88830, CBP classified the passenger boarding bridges under heading 8428, HTSUS, as lifting and handling machines.

We have reviewed these rulings and determined that the classification decisions set forth therein is incorrect. It is now our position that the passenger boarding bridges in each ruling are properly classified under heading 8479, HTSUS, machines with individual functions.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY D85781, NY B88222, and NY D88830, and any other ruling not specifically identified, to reflect the proper classification of a certain style of cycling shoes to the analysis contained in Headquarters Ruling Letter (HQ) H108235, as set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: June 23, 2015

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H108235

June 23, 2015

OT:RR:CTF:TCM H108235 HvB

CATEGORY: Classification

TARIFF NO.: 8479.71.00

TED CORBETT

APEX INDUSTRIES INC.

250 PACIFIC AVENUE

MONCTON, NEW BRUNSWICK

CANADA E1C 8M6

RE: Revocation of New York Ruling Letter (NY) D85781, NY D88830, and NY B88222; Classification of Aircraft Passenger Boarding Bridges

DEAR MR. CORBETT:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) D85781, issued to you on January 20, 1999. In that ruling, CBP classified three types of aircraft passenger boarding bridges designed to be used for embarking and disembarking passageway between a terminal and an aircraft under subheading 8428.90.0090¹, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “Other lifting, handling, loading or unloading machinery: other: other: other.”

We have reviewed NY D85781, and have found it to be in error. For the reasons set forth below, we hereby revoke NY D85781, and two other rulings with substantially similar merchandise: NY B88222, dated August 13, 1997, which was issued to Dynasty Customer Brokers, Inc. and NY D88830, dated March 24, 1999, which was issued to FMT Aircraft Gate Support System Canada, Inc.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057),), a notice was published in the CUSTOMS BULLETIN, Volume 49, No. 16, on April 22, 2015, proposing to revoke NY D85781, NY D88830, and NY B88222, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

In NY D85781, we described the merchandise as follows:

The Apex Elevating Sliding Bridge basically consists of a fixed walkway, rotunda, moveable tunnel, bridgehead cab, lift column, service door, landing and stairs, and a canopy. The tunnel extends from the terminal doorway at a maximum vertical travel rate of 1.5 meters per minute and a maximum horizontal travel rate of 6 meters per minute, thus enabling the bridge to align with an aircraft’s doorway. Limit switches and physical stops ensure the bridge operates safely.

The Apex Apron Drive Bridge is similar to the Elevating Sliding Bridge, but utilizes two or three telescoping tunnels to connect to a commercial

¹ The product was classified under an 8 and 10 digit subheading which no longer exists: 8428.90.0090. The applicable 2015 HTSUS subheading would be 8428.90.0290.

aircraft doorway. It also features a service door with stairs and a landing so that authorized personnel have access to the terminal apron.

Apex Fixed Walkways basically consist of a tunnel and rotunda supported on fixed columns and an extendable walkway. The fixed tunnels are manufactured in sections up to 55 feet in length and have rigid tubular end frames for additional structural stability. As with the other bridges, the interior walls consist of laminated plastic panels, and the floor features either neoprene rubber or carpeting.

And, in NY B88222² and NY D88830³, we classified similar merchandise.

ISSUE:

Are the passenger boarding bridges classifiable under heading 8428, HTSUS, as “Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics)” or under heading 8479, HTSUS, as “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof”?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 8428** Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics):

- 8428.90 Other machinery...
- 8479** “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof:

Passenger Boarding Bridges:

² In NY B88222, the merchandise was described as follows: “TianDa passenger boarding bridges act as embarking and disembarking passageways between a terminal and an aircraft. Apron drive type boarding bridges basically consist of a rotunda connected to the terminal, telescoping tunnels, a cab platform and cab, and dual hydraulic or electro-mechanical lifting columns mounted on a bogey capable of horizontal movement. Driven by the bogey, the bridge can extend to the combined length of its tunnels and swivel around its rotunda to reach the aircraft. The cab then rotates to align with the aircraft’s fuselage, and the lifting columns raise or lower the bridge to a level even with the aircraft’s door.”

³ In NY D88830, the FMT Telescopic Bridge was described as follows: “These are mechanical devices which act as embarking and disembarking passageways between the terminal building and an aircraft or ship. The Mobile Telescopic Bridge basically consists of a rotunda which connects to the terminal building, three glass-walled telescoping tunnels, a hydraulic lift column resting on hydraulic twin wheel bogies, and an adjustable cab containing a microprocessor based interactive operator control panel, electronic bumper, and extendable canopy.”

8479.71

Of a kind used in airports

Legal Note 4 to Section XVI, HTSUS, provides, in relevant part:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 84, then the whole falls to be classified in the heading appropriate to that function.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8479, HTSUS, provide, in part:

* * *

(III) MISCELLANEOUS MACHINERY

This group includes:

* * *

(32) Passenger boarding bridges. These bridges permit passengers and personnel to walk between a terminal building and a parked aircraft, a cruise ship or ferry-boat, without having to go outside. The bridges generally consist of a rotunda assembly, two or more rectangular telescopic tunnels, vertical lift columns with wheel bogies, and a cabin located in the front part of the bridges. They include electromechanical or hydraulic devices that are designed for moving the bridges horizontally, vertically and radially (i.e., their telescopic sections, cabin, vertical lift columns, etc.), in order to adjust the bridges to the appropriate position to the particular aircraft’s door, or to the port (entrance) of the cruise ship or ferry-boat. The passenger boarding bridges of the type used at seaports can be, furthermore, equipped with a transitional device installed on their foreshore which can be extended into the port (entrance) of the cruise ship or ferry-boat. These bridges themselves do not lift, handle, load or unload anything.

* * *

The ENs to heading 8428, HTSUS, provide, in part:

* * *

This heading also excludes:

* * *

(c) Passenger boarding bridges (heading 84.79).

* * * * *

Heading 8428, HTSUS, provides for “Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics).” CBP has held, consistent with EN 84.28, that heading 8428 is intended for those machines that “either perform the actual function of lifting, moving or manipulating an object.” See HQ H058784, dated December 15, 2009. The subject passenger boarding bridges do not actively engage in lifting, moving, or handling objects. Instead, they act as walkways that allow airline personnel and passengers to cross between the airport terminal and the aircraft. In addition, the EN for heading 8428 expressly excludes the merchandise in question, passenger boarding bridges, under EN 84.28(c). As such, we conclude that the passenger boarding bridges are not “lifting and handling machinery” of heading 8428, HTSUS.

Heading 8479, HTSUS, provides, in pertinent part, for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof.” The three different types of passenger boarding bridges classified in NY D85781, identified as the Apex Elevating Sliding Bridge, the Apex Drive Bridge, and the Apex Fixed Bridge, serve as passageways between a terminal and an aircraft. Each passenger boarding bridge consists of various parts, such as tunnel, fixed walkway, and a rotunda, which work in concert to allow airline personnel and passengers to access to the aircraft and terminal. Hence, under Note 4 to Section XVI, HTSUS, the components contribute together to a clearly defined function covered by heading 8479, HTSUS.

As such, we find that the passenger boarding bridges at issue are classified under heading 8479, specifically, in subheading 8479.71.00, HTSUS, as “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof: Passenger Boarding Bridges: Of a Kind used in Airports.” We also note that at HSC 41 in November 2008 (Annex F/2 to Doc. NC1263E1a), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) recently considered the structure and function of passenger boarding bridges and determined that the classification should be in heading 8479, by application of GRIs 1 and 6. As stated in T.D. 89–80, CBP accords HSC opinions the same weight as that the EN, i.e., while neither legally dispositive or binding, these decisions are generally indicative of the proper interpretation of these headings, and note that this ruling is in accord with the HSC opinion.

HOLDING:

By application of GRI 1 and Note 4 to Section XVI, the subject passenger boarding bridges are classified in heading 8479.71.00, HTSUS, specifically in subheading 8479.71.00, which provides for: “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof: Passenger Boarding Bridges: Of a Kind used in Airports.”

EFFECT ON OTHER RULINGS:

NY D85781, dated January 20, 1999, is hereby revoked.

NY D88830, dated March 24, 1999, is hereby revoked.

NY B88222, dated August 13, 1997, is hereby revoked.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Sincerely,
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division